



ENVIRONMENTAL PROTECTION AGENCY

[EPA-HQ-OGC-2022-0292; FRL_9650-01-OGC]

Proposed Settlement Agreement, Clean Water Act

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed settlement agreement; request for public comment.

SUMMARY: In accordance with the U.S. Environmental Protection Agency Administrator's October 16, 2017 Directive Promoting Transparency and Public Participation in Consent Decrees and Settlement Agreements, the agency is providing notice of a proposed settlement agreement in a lawsuit filed by Diné Citizens Against Ruining the Environment, Amigos Bravos, San Juan Citizens Alliance, and Center for Biological Diversity ("Petitioners"), in the U.S. Court of Appeals for the Ninth Circuit. On January 22, 2021 the Petitioners filed a lawsuit seeking review of the 2020 National Pollutant Discharge Elimination System (NPDES) permit issued by U.S. Environmental Protection Agency (EPA) Region 9 to the Arizona Public Service Company for discharges from the Four Corners Power Plant. Under the proposed settlement agreement, the parties would seek to stay the associated case for at least 15 months.

DATES: Written comments on the proposed settlement agreements must be received by **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION DATE IN THE FEDERAL REGISTER]**.

ADDRESSES: Submit your comments, identified by Docket ID number EPA-HQ-OGC-2022-0292, online at www.regulations.gov (EPA's preferred method). For comments submitted at www.regulations.gov, please follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from www.regulations.gov. EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a

written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA generally will not consider comments or comment contents located outside of the primary submission (i.e. on the web, cloud, or other file sharing system). EPA encourages the public to submit comments via [www. Regulations.gov](http://www.Regulations.gov), as there will be a delay in processing mail and no hand deliveries will be accepted. For additional submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <http://www2.epa.gov/dockets/commenting-epa-dockets>.

FOR FURTHER INFORMATION CONTACT: Elise O’Dea, Water Law Office (2355A), Office of General Counsel, U.S. Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460; telephone: (202) 564-4201; email address: odea.elise@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Additional Information About the Proposed Settlement Agreement

On January 22, 2021, four organizations (Diné Citizens Against Ruining the Environment, Amigos Bravos, San Juan Citizens Alliance, and Center for Biological Diversity, hereinafter “Petitioners”) filed a petition in the U.S. Court of Appeals for the Ninth Circuit seeking review of the 2020 National Pollutant Discharge Elimination System (NPDES) permit issued by U.S. Environmental Protection Agency (EPA) Region 9 to the Arizona Public Service Company for discharges from the Four Corners Power Plant. Petitioners previously sought review of the permit before the Environmental Appeals Board, which issued an order denying review of the permit on September 30, 2020 in the case *In re Arizona Public Service Co.* The parties have engaged in mediation in an attempt to resolve Petitioners’ concerns with the Four Corners Power Plant NPDES permit and have negotiated a proposed settlement agreement. Pursuant to the proposed settlement agreement, EPA Region 9 would, among other things, perform a “reasonable potential analysis” for temperature and potentially take related action that

would result in dismissal of the petition for review.

For a period of thirty (30) days following the date of publication of this notice, the agency will accept written comments relating to the proposed settlement agreement from persons who are not parties to the proposed settlement agreement. EPA also may hold a public hearing on whether to enter into the proposed settlement agreement. EPA or the Department of Justice may withdraw or withhold consent to the proposed settlement agreement if the comments received disclose facts or considerations that indicate that such consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the Clean Water Act.

II. Additional Information About Commenting on the Proposed Settlement Agreement.

A. How can I get a copy of the proposed settlement agreement?

The official public docket for this action (identified by EPA-HQ-OGC-2022-0292) contains a copy of the proposed settlement agreement. The official public docket is located at the Office of Environmental Information (OEI) Docket in the EPA Docket Center, EPA West, Room 3334, 1301 Constitution Ave. NW., Washington, DC. The regular hours of the EPA Docket Center Public Reading Room are from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays; however, due to the COVID-19 pandemic, there may be limited or no opportunity to enter the docket center. At the time of this printing, the docket center is closed to public visitors out of an abundance of caution for members of the public and EPA staff to reduce the risk of transmitting COVID-19. During the closure, Docket Center staff will continue to provide remote customer service via email, phone, and webform. For further information on EPA Docket Center services, see <https://www.epa.gov/dockets>. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OEI Docket is (202) 566–1752.

An electronic version of the public docket is available on EPA’s website at www.regulations.gov. You may use www.regulations.gov to submit or view public comments, access the index listing of the contents of the official public docket, and access those documents in the public docket that are available electronically. Once in the system, key in the appropriate

docket identification number then select “search.” It is important to note that EPA’s policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing online at www.regulations.gov without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. Information claimed as CBI and other information whose disclosure is restricted by statute is not included in the official public docket or in the electronic public docket.

EPA’s policy is that copyrighted material, including copyrighted material contained in a public comment, will not be placed in EPA’s electronic public docket but will be available only in printed, paper form in the official public docket. EPA has not included any copyrighted material in the docket for this proposed settlement. If commenters submit copyrighted material in a public comment, it will be placed in the official public docket and made available for public viewing when the EPA Docket Center is open.

B. How and to whom do I submit comments?

You may submit comments as provided in the **ADDRESSES** section. Please ensure that your comments are submitted within the specified comment period. The EPA encourages the public to submit comments via www.Regulations.gov. There will be a delay in processing mail and no hand deliveries will be accepted due to the COVID-19 pandemic.

EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. Any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA’s electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

Use of the www.regulations.gov website to submit comments to EPA electronically is

EPA's preferred method for receiving comments. The electronic public docket system is an "anonymous access" system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment. In contrast to EPA's electronic public docket, EPA's electronic mail (e-mail) system is not an "anonymous access" system. If you send an e-mail comment directly to the Docket without going through www.regulations.gov, your e-mail address is automatically captured and included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

Dated: March 14, 2022.

Steven Neugeboren,

Associate General Counsel.

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